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Supreme Court of the United States

October Term, 1970

No. 1261

In The Matter Of

CLEVELAND J. STOCKTON and
DOROTHY ALTMAN STOCKTON,
Plaintiffs - Appellees,
(Respondents)

VERSUS

JOHN A. ALTMAN, *Defendant-Appellant,*
(Petitioner)

AND

ELEANOR ALTMAN CURRAN,
Defendant-Appellee,
(Respondent)

REPLY TO PETITION FOR WRIT OF CERTIORARI

To The United States Court of Appeals
For the Fifth Circuit

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RESPONDENTS' REPLY TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT
OF THE UNITED STATES:

Respondents, Cleveland J. Stockton, Dorothy Altman, Stockton and Eleanor Altman Curran, pray that the Petition for Writ of Certiorari sought by John A. Altman, petitioner, be denied. The record before this

Honorable Court does not bring this case within the purview of Rule 19, Supreme Court Rules. There is no "special and important reason" for a review on writ of certiorari of the decision of the Court of Appeals. Petititioner does not contend that that court has rendered a decision in conflict with the decision of another Court of Appeals on the same matter, has decided an important state question in a way conflicting with applicable state law, has decided an important question of federal law not heretofore decided or has decided a federal question in a manner which conflicts with applicable decisions of this Court. In fact, only by a highly stultified construction could the Petition for Writ of Certiorari be interpreted as charging that the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. On the contrary, it was the Court of Appeals' application of established law and procedure to rather simple, uncomplicated facts which resulted in the opinion with which petitioner is so consummately displeased.

THE FACTS

This was a suit to determine the right of John A. Altman and Eleanor Altman Curran to an accounting with respect to a family business conducted by them with their mother, Dorothy Altman Stockton, and their step-father, Cleveland J. Stockton. The business consisted of two facets, a wine business and a stock investment program.

From 1950 through 1960 partnership tax returns were filed naming the four members of the family as partners in varying percentages. The arrangement was terminated in the first four months of 1961. (R.165-166).

From that time to the filing of suit Altman kept

and operated the wine business as a sole proprietorship (R. 174-175; 312-314; 774-775). The Stocktons kept the stocks and assumed the large indebtedness against which the stocks were pledged. For almost six years this status continued until Altman, in late 1966, began demanding more than the wine business which he had originally accepted as his share of the family venture. To quiet his demands, the Stocktons filed suit for declaratory judgment in May, 1967 (R. 1242.) Altman countered with a demand for an accounting and the additional assets to which he alleged the accounting would show he was entitled (R. 1283).

The Stocktons contended that there had been no true partnership because that had not been their intention and, alternatively, that if a partnership had in fact been formed, then that Alman was nevertheless not entitled to an accounting because there had been a final settlement of the partnership accounts, because there had been an accord and satisfaction, because the claim was barred by laches, and because Altman had waived or was estopped from asserting any claim he might have to partnership assets other than the wine business by his retention and continued operation of the business without protest after April of 1961.

Altman maintained that there had been a partnership in fact, denied that there had been any settlement or accounting, and contended that he was entitled to an accounting and his share of all the assets in the hands of the Stocktons.

Eleanor Altman Curran, Altman's sister and the step-daughter and daughter of Mr. and Mrs. Stockton, respectively, would have recognized a material gain had she joined with her brother in the assertion of the claims he put forth. If he was entitled to a share of the assets as he claimed, so was she. If there had

been no settlement of the family accounts she, as well as her brother, would have been entitled to many thousands of dollars. Yet she filed an answer in which she agreed with the contentions of her mother and step-father. She knew intimately the entire history of the matter and she denied that either she or her brother was entitled to any assets other than those which he had received when the family ceased doing business as an entity. In so doing, she denied to herself any share in the assets of the family business. Her motives cannot be questioned. She took the position she did, adverse as it was to her own financial interest, because the truth required her to do so.

The jury found, in response to special interrogatories:

1. That John Altman and the Stocktons formed a partnership in 1950 and that Altman was to share 50% in the profits of both the wine business and the stock investments and to be liable for 50% of the losses of each (R-1340).

2. That in 1961 or thereafter, the Stocktons and Altman expressly or impliedly agreed that as his share of the partnership Altman would thereafter keep and operate the wine business as his separate property and the Stocktons would keep the stock (R.1342).

3. That Altman's conduct after April 30, 1961, by act, word or silence, was reasonably calculated to and did lead the Stocktons to believe that he had accepted the wine business as his net share of the partnership and did not intend to make any further claims against them (R.1343).

4. That John Altman would gain an advantage to which he was not otherwise entitled or the Stocktons would suffer a detriment they would not otherwise suffer if Altman were allowed to change his position and to demand more than the wine business (R.1344).

5. That the disagreement between the Stocktons and Altman was settled in 1961 or 1962 by an express or implied agreement between them that Altman would take the wine business as his sole property and that the Stocktons would keep the corporate stock (R.1345).

6. That Altman waited for a longer period of time than a person of ordinary prudence would have waited before demanding an accounting and that events occurred during the period of the delay such that the Stocktons could not be put back in the position they were in on April 30, 1961 without injustice to them. (R.1346).

Although petitioner attempted to assert in the Court of Appeals that there was insufficient evidence to justify jury findings 2 through 6 above, the Court of Appeals, in paragraph II of its opinion, quite properly held that in the absence of a motion for judgment notwithstanding the verdict made at the trial level, it could not examine the evidence for sufficiency. The court then graciously went further and held that even had the question been properly preserved, it was quite apparent that there was "indeed sufficient evidence to sustain the controverted answers and verdict."

Faced with an unhappy jury verdict petitioner then contended, for the first time, that the verdict was

advisory only and that the trial court should make findings of fact independently (R.1348). The trial judge disagreed with the contention but noted in the judgment that had the petitioner been correct, the court would have found the facts precisely as the jury did in its findings numbers 2 through 6 (R.1376).

Petitioner's contention in the Court of Appeals that the fatal jury findings were not binding upon the trial court were rejected on the basis of decisions by this court—**Beacon Theaters, Inc. v. Westover,** 359 U.S. 500, 79 Sup.Ct. 948, 3 L.Ed.2d 988 (1959) and **Dairy Queen, Inc. v. Wood.** 369 U.S. 469, 82 Sup.Ct. 894, 8 L.Ed.2d 44 (1962).

Petitioner's next effort to avoid the consequences of the jury verdict was the assertion that the interrogatories were improperly worded and the answers thereto were in conflict. In paragraphs III and IV of its opinion, the Court of Appeals succinctly describes petitioner's contentions and properly and fairly rejects them. An attempt in this brief to improve upon the Court of Appeals' statement of the questions presented or the manner in which they should be resolved would be futile.

THE EQUITIES

Although the petition presented to the Court in this case represents an heroic attempt to characterize the division of the family business between the Stocktons and Altman as unfair, the facts reflected by the record reveal an entirely different picture.

The wine business which Altman accepted as his share of the family venture had always produced a steady income which at times amounted to a gross of as much as $30,000 to $50,000 per month (R.631, 753). It had no indebtedness against it. When the family venture commenced in 1950, the capital stock

which Mr. Stockton contributed along with the wine busines had a value of approximately $240,000 (R.858-860). In 1968 the value of the securities held by Stockton was between $1,300,000 and $1,500,000 (R.793-794). At the time the busines venture was terminated in 1961, however, there was an indebtedness against the stock of $478,000 (R.1099). Altman admitted knowing that the value of the stocks was volatile, that they could be worth thousands of dollars one day and only a few dollars the next (R.318), that Mr. Stockton had incurred additional indebtedness as high as $600,000 in connection with the handling of the stock (R.318) and that after April 30, 1961 the discharge of the bank's indebtedness was Stockton's personal obligation (R. 318 - 319).

While it is true that after Altman took over the wine business in 1961 the income dropped off rather sharply (R.308 - 309), this fact does not render the settlement of accounts inequitable, although it may explain Altman's belated decision to seek a different settlement. On the contrary, Altman's election to accept the wine business which was capable of producing a monthly gross income of $30,000 to $50,000, leaving to Stockton the stock and the personal responsibility for discharging the half million dollars indebtedness against it was patently reasonable. The conclusion that he made the election finds support in Altman's own conduct. He accepted the wine business and never brought the matter up again (R.772) until shortly before this suit was filed. He realized in 1961 that the family venture was terminated (R.165 - 166), and he made no further demands upon the Stocktons and never claimed that he had been deprived of any interest he had in the family business (R.773; 840-841). He indicated no dissatisfaction whatsoever with the arrangement (R.774), changed the name of the wine

business to his own (R.174; 312 - 313) and accepted it as his part of anything he and the Stocktons had done together before (R.774 - 775).

Under these circumstances, the granting of a writ of certiorari in Altman's belated suit to review what he and the two courts below have set at rest would not further the ends of justice. Justice has already been done.

CONCLUSION AND PRAYER

Because the judgments of the lower courts are eminently correct and the Petition for Writ of Certiorari does not present matters of sufficient consequence to warrant this Courts review of this case on certiorari, respondents Cleveland J. Stockton, Dorothy Altman Stockton and Eleanor Altman Curran respectfully pray that the Petition for Writ of Certiorari be denied.

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CERTIFICATE OF MAILING

I, Richard A. Hall, one of the attorneys of record for respondents, do hereby certify that the foregoing Reply has been served upon petitioner, John A. Altman, by depositing true copies of the same in a United States mail box, air mail postage prepaid, properly addressed to his attorneys of record as set forth below, on this _____ day of February, 1971, such attorneys of record being:

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